

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

LANCE IAN OSBAND,

Petitioner,

vs.

ROBERT L. AYERS,
Acting Warden of San Quentin
State Prison,

Respondent.

No. CIV S-97-0152 WBS KJM

DEATH PENALTY CASE

SCHEDULING ORDER

The parties each proposed schedules for pre-evidentiary hearing matters. After reviewing the parties' submissions, the undersigned finds January 22, 2007 is the most practical date to start the evidentiary hearing. The parties are warned that the court considers the January date firm. The parties should have ample time before then to complete all pre-evidentiary hearing work. Any request for a continuance of the January 22 date must be supported by a showing of extraordinary circumstances.

Petitioner asks the court to resolve two matters before issuing this order. First, he requests time for each party to comment on the other's proposed schedule to inform the court of any time conflicts. The parties will have the opportunity to comment on the schedule set out below. Second, petitioner asks the court to give respondent an early opportunity to make any categorical objection to the receipt of testimony by declaration. At the hearing, respondent's

1 counsel stated that in his experience the replacement of direct testimony by declarations saved
2 little or no time. The undersigned finds the submission of direct testimony by declaration and of
3 some witnesses' complete testimony by deposition to be an efficient way for the court to control
4 the time and costs of the evidentiary hearing. Further, declarations and depositions in lieu of in-
5 court testimony are permitted under the habeas statute. 28 U.S.C. § 2246. The undersigned will
6 permit their use. Respondent will have an opportunity to object to the receipt of specific
7 testimony by declaration or deposition.

8 Good cause appearing, the following is the schedule for pre-evidentiary hearing
9 matters:

- 10 1. By June 28, 2006 each party shall file any motion for discovery.
11 Opposition briefs are due by July 12 and any replies by July 21, 2006. On
12 July 26, 2006 at 10:00 a.m. the undersigned will hold a hearing on any
13 discovery disputes. If discovery is permitted, the court will set a cut-off
14 date for discovery. If discovery is denied, the dates set out below may be
15 advanced slightly.
- 16 2. By October 27, 2006, each party shall submit the following:
 - 17 a. A copy of each document he proposes to submit under Rule 7 of
18 the Rules Governing § 2254 Cases.
 - 19 b. A list of all evidentiary hearing witnesses and exhibits with the
20 information required by Federal Rule of Civil Procedure 26.
 - 21 c. Identification of any witness whose testimony he proposes to
22 submit by deposition and copies of the direct testimony he
23 proposes to submit by declaration.
 - 24 d. A summary of the testimony of any witness he intends to call to
25 testify at the evidentiary hearing.

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3. It appears the parties are in agreement that the testimony of Dr. Mehtani may be taken by deposition. His deposition shall be completed by October 27, 2006.
4. By November 10, 2006, each party shall file any motions in limine, any objections to documents to be admitted under Rule 7, and any objections to the methods proposed for taking testimony. In addition, at this time, each party may propose the use of interrogatories or depositions for his cross-examination of the other party's witness(es). Responses shall be filed by November 27 and replies by December 8, 2006. A hearing will be scheduled if necessary.
5. On January 15, 2007 at 11:00 a.m. in courtroom # 26, the undersigned will hold a pre-evidentiary hearing conference to discuss outstanding matters.
6. Beginning January 22, 2007 at 9:00 a.m. in courtroom # 26, the undersigned will hold the evidentiary hearing described in the court's May 11 and December 1, 2005 orders.
7. Within five days of the filed date of this order the parties shall inform the court of any conflicts with the dates set out herein and propose alternate dates.

DATED: June 14, 2006.


UNITED STATES MAGISTRATE JUDGE